APPENDIX.

APPENDIX.

United States Copyright Acts.

ORIGINAL COPYRIGHT STATUTE, MAY 31, 1790.

"Sec. 1. That from and after the passing of this act, the author and authors of any map, chart, book or books already printed within these United States, being a citizen or citizens thereof, or resident within the same, his or their executors, administrators or assigns, . . . shall have the sole right and liberty of printing, reprinting, publishing and vending such map, chart, book or books for the term of fourteen years from the recording of the title thereof in the clerk's office, as is herein after directed," etc.

"Sec. 2. That if any other person or persons, from and after the recording the title of any map, chart, book or books, and publishing the same as aforesaid, . . . shall publish, sell, or expose to sale, or cause to be published, sold, or exposed to sale, any copy of such map, chart, book or books, without such consent first had and obtained in writing as aforesaid, then such offender or offenders shall forfeit all and every copy and copies of such map, chart, book or books, and all and every sheet and sheets, being part of the same, or either of them, to the author or proprietor of such map, chart, book or books, who shall forthwith destroy the same: And every such offender and offenders shall also forfeit and pay the sum of fifty cents for every sheet which shall be found in his or their possession, either printed or printing, published, imported or exposed to sale," etc.

"Sec. 4. That the author or proprietor of any such map, chart, book or books, shall, within six months after the publishing thereof, deliver, or cause to be delivered to the Secretary of State a copy of the same, to be preserved in his office."

Under this statute musical compositions were protected only as coming within the meaning of the term "book."

Amendment of April 29, 1802.

This Act did not repeal the Act of 1790, but is entitled as "supplementary" to it, "and extending the benefits thereof to the arts of designing, engraving and etching historical and other prints."

Sections 1 and 2 provide for the Act being extended to the articles mentioned in the title as above and for the notice to be printed on such articles; and the Act contains further the following:

> "Sec. 3. That if any print-seller or other person whatsoever, . . . shall engrave, etch or work, as aforesaid, or in any other manner copy or sell, or cause to be engraved, etched, copied or sold, in the whole or in part, by varying, adding to or diminishing from the main design, or shall print, reprint or import for sale, or cause to be printed, reprinted or imported for sale any such print or prints, or any parts thereof, without the consent of the proprietor, . . . then such offender or offenders shall forfeit the plate or plates on which such print or prints are or shall be copied, and all and every sheet or sheets (being part of or whereon such print or prints are or shall be copied or printed) to the proprietor or proprietors of such original print or prints, who shall forthwith destroy the same; and further, that every such offender or offenders shall forfeit one dollar for every print which shall be found in his, her, or their custody, either printed, published or exposed for sale," etc.

Statute of February 3, 1831.

This Act is entitled, "An Act to Amend the Several Acts Respecting Copyright," and embodies substantially all that it did not repeal of the precedent statutes.

This is the first statute in which "*musical composition*" appears as a distinct subject of copyright.

"Sec. 1. That from and after the passing of this Act, any person or persons, being a citizen or citizens of the United States, or resident therein, who shall be the author or authors of any book or books, map, chart, or *musical composition*, which may be now made or composed, and not printed and published, or shall hereafter be made or composed, or who shall invent, design, etch, engrave, work, or cause to be engraved, etched, or worked from his own design, any print or engraving, and the executors, administrators, or legal assigns of such person or persons, shall have the sole right and liberty of printing, reprinting, publishing, and vending such book or books, map, chart, *musical composition*, print, cut, or engraving, in whole or in part, for the term of twenty-eight years from the time of recording the title thereof, in the manner hereinafter directed."

Sections 2 and 3 provide for extensions or renewals.

Section 4, after providing for filing copy of title, provides:

"And the author or proprietor of any such book, map, chart, *musical composition*, print, cut, or engraving shall, within three months from the *publication* of said book, map, chart, *musical composition*, print, cut, or engraving, deliver or cause to be delivered a copy of the same to the clerk of said district. And it shall be the duty of the clerk of each district court, at least once in every year, to transmit a certified lists of all such records of copyright, including the titles so recorded, and the dates of record, and also all the several copies of books and other works deposited in his office according to this act, to the Secretary of State, to be preserved in his office.

"Sec. 5. That no person shall be entitled to the benefit of this act, unless he shall give information of copyright being secured, by causing to be inserted, in the several copies of each and every edition published during the term secured on the title-

page, or the page immediately following, if it be a book, or if a map, chart, *musical composition*, print, cut, or engraving, by causing to be impressed on the face thereof, or if a *volume* of maps, charts, *music* or engravings, upon the title frontispiece thereof, the following words, viz., 'Entered according to Act of Congress, in the year , by A. B., in the clerk's office of the district court of ,'" (as the case may be).

Section 6 provides a penalty for infringement of a book.

"Sec. 7. That, if any person or persons, after the recording the title of any print, cut, or engraving, map, chart or *musical composition*, according to the provisions of this act, shall, within the term or terms limited by this act, engrave, etch, or work, sell, or copy, or cause to be engraved, etched, worked, or sold, or copied, either on the whole, or by varying, adding to, or dimishing the main design with intent to evade the law; or shall print or import for sale, or cause to be printed, or imported for sale, any such map, chart, *musical composition*, print, cut, or engraving, or any parts thereof, without the consent of the proprietor or proprietors of the copyright thereof, first obtained in writing, signed in the presence of two credible witnesses; or, knowing the same to be so printed or imported without such consent, shall publish, sell, or expose to sale, or in any manner dispose of any such map, chart, *musical composition*, engraving, cut, or print, without such consent, as aforesaid; then such offender or offenders shall forfeit the plate or plates on which such map, chart, *musical composition*, engraving, cut or print, shall be copied, and also all and *every sheet* thereof so copied or printed as aforesaid, to the proprietor or proprietors of the copyright thereof; and shall further forfeit one dollar for *every sheet* of such map, chart, *musical composition*, print, cut, or engraving, which may be found in his or their possession, printed or published or exposed to sale, contrary to the true intent and

meaning of this act; the one moiety thereof to the proprietor or proprietors, and the other moiety to the use of the United States, to be recovered in any court having competent jurisdiction thereof."

Sections 8, 9 and 10 relate to matters not pertinent to the present inquiry.

"Sec. 11. That, if any person or persons, from and after the passing of this act, shall print or publish any book, map, chart, *musical composition*, print, cut, or engraving, not having legally acquired the copyright thereof, and shall insert or impress that the same hath been entered according to Act of Congress, or words purporting the same, every person so offending shall forfeit and pay one hundred dollars; one moiety thereof to the person who shall sue for the same, and the other to the use of the United States, to be recovered by action of debt, in any court of record having cognisance thereof."

[NOTE:—It will be instructive to review the above quoted sections in view of the fact that they are the first statutory provisions in which "musical composition" is expressly recognized, in order to ascertain therefrom the meaning of the word "copy" as applied to musical composition, and the meaning of "musical composition" in view of the word "copy" and other words applying to it.

Section 4 provides that a copy of the musical composition must be delivered to the clerk of the court; and that all copies (of musical compositions) must be forwarded annually by the clerk of the court to the Secretary of State. The "copy," therefore, of a musical composition must be something which can be delivered and forwarded, and the "musical composition" must be something of

which there can be a copy susceptible of delivery and forwarding.

Section 5 provides for the marking of the copyright notice on the face of the musical compositions, or if the copyrighted article is "a volume of music," then on the title page. The "musical composition," therefore, must be something which can have a notice marked on its face and which may be in a "volume of music" having a "title page."

Section 7 lumps together "print, cut, engraving, map, chart and musical composition," and imposes penalty upon whoever shall "engrave, etch or work, sell, or copy any such map, chart, musical composition, print, cut, or engraving." The different verbs naming the infringing acts are evidently intended to be applied severally and not collectively to the several nouns defining the copyrighted articles. The word "work" is not used with reference to musical composition, because that word "work" appears first in the Act of 1802 and is there used with reference to an engraving, cut, etching or print. The application of all the other words is unmistakable, and the only words defining the infringing act which can be taken as applying to musical compositions are the words "sell" and "copy." And what is meant by "copy" in this section is clearly shown by the penalties prescribed and the method of computing them; to wit, forfeiture of the "plate or plates" on which the musical composition shall be copied; forfeiture of all and "every sheet" thereof so copied or printed, and forfeiture of one dollar for "every sheet" of such musical composition found in the possession of the infringer or exposed for sale. The

copy referred to is therefore something which can be produced by means of a plate and which may be in sheets.

Section 11 provides penalty for printing or publishing musical compositions if the printer or publisher shall "falsely *insert or impress* that the same hath been entered according to Act of Congress. The thing called *"musical composition,"* therefore, in this section is a thing which can have inserted or impressed upon it a false statement, which seems to indicate that the statute did not intend to distinguish in kind between "musical composition" and the "copy" of such musical composition.

That the word "publish" was not intended to cover public performance of the composition was evidenced by the later Act of 1856, which gave such right "hereafter," and states it as "along with" previously granted rights.

The word "sheet" cannot refer to perforated roll, because such rolls were entirely unknown at the date of the Act of 1831.]

Act of August 10, 1846.

This is entitled, "An Act to Establish the Smithsonian Institution for the Increase and Diffusion of Knowledge Among Men." It contains the following provision bearing upon copyright:

> "Sec. 10. That the author or proprietor of any book, map, chart, *musical composition*, print, cut, or engraving, for which a copyright shall be secured under the existing acts of Congress, or those which shall hereafter be enacted respecting copyrights, shall, within three months from the publication of said book, map, chart, *musical composition*, print,

cut, or engraving, deliver, or cause to be delivered, one copy of the same to the librarian of the Smithsonian Institution, and one copy to the Librarian of Congress Library, for the use of said libraries."

[NOTE:—In 1846 the perforated roll for the operation of musical instruments was unknown; so also were the phonographic disks and cylinders. The word "copy" as used in this act, therefore, where referring to musical composition, was clearly intended to mean a copy in the ordinary sense of a printed copy, in which alone the word could have been understood at that time—the same sense in which it would be understood as applying to the other articles mentioned, book, map, chart, print, cut, or engraving.]

ACT OF AUGUST 18, 1856.

This is the first enactment which expressly recognizes "dramatic compositions," which, prior thereto, were included only as they came under the head of books. The provision is as follows:

"That any copyright hereafter granted under the laws of the United States to the author or proprietor of any dramatic composition, designed or suited for public representation, shall be deemed and taken to confer upon the said author or proprietor, his heirs or assigns, along with the sole right to print and publish the said composition, the sole right also to act, perform, or represent the same, or cause it to be acted, performed, or represented, on any stage or public place during the whole period for which the copyright is obtained; and any manager, actor, or other person acting, performing, or representing the said composition, without or against the consent of said author or proprietor, his heirs or assigns,

shall be liable to damages to be sued for and recovered by action on the case or other equivalent remedy, with costs of suit in any court of the United States, such damages in all cases to be rated and assessed at such sum not less than one hundred dollars for the first and fifty dollars for every subsequent performance, as to the court having cognizance thereof shall appear to be just."

[NOTE:—This legislation seems to show two things:

First, that the 34th Congress which enacted it was of the opinion that the prior copyright acts did not give to the author or proprietor of the dramatic composition the exclusive right to reproduce on the stage; and

Second, that the prior acts only gave him the right "to print and publish the said composition."

It follows that that Congress did not believe that the word "publish" in the prior acts was broad enough to cover reproduction on the stage.

It follows obviously that the word "publish" in the prior statutes was not broad enough to include public performance of a musical composition.]

ACT OF MARCH 3, 1865.

This Act provides for extending the protection of copyright to photographs and negatives thereof, and contains the following provision:

"Sec. 2. That a printed copy of every book, pamphlet, map, chart,, musical composition, print, engraving or photograph for which a copyright shall be secured under said acts shall be transmitted, free of postage or other expense, by the author or proprietor thereof within one month of the date of publication to the Library of Congress at Wash-

ington for the use of said Library, and the Librarian of Congress is hereby required to give a receipt in writing for the same.

"Sec. 3. That if any proprietor of a book, pamphlet, map, chart, musical composition, print, engraving, or photograph, for which a copyright shall be secured as aforesaid, shall neglect to deliver the same pursuant to the requirement of this act, it shall be the duty of the Librarian of Congress to make demand thereof in writing, at any time within twelve months after the publication thereof; and in default of the delivery thereof within one month after the demand shall have been made, the right of exclusive publication secured to such proprietor under the acts of Congress respecting copyright shall be forfeited."

[NOTE:—Three deductions are obvious from this statute:

First. That a photograph was not considered by Congress to come within the category of cuts, prints, engravings, or etchings; thus emphasizing that coypright statutes are not to be extended by implication, inference or analogy.

Second. That a *musical composition* is a thing of which a "*printed* copy" can be made.

Third. Since Sec. 2 of the Act provides that a *printed copy* shall be sent to the Librarian of Congress and Sec. 3 provides that if the proprietor of a "*musical composition*" shall "neglect to deliver the *same* pursuant to the requirement of this Act," it shall be the duty of the Librarian of Congress to make demand therefor in writing, etc., it is evident that the "*printed copy*" and the "*musical composition*" are conceived of as being identically the same thing, the words "the same" in Sec. 3 relating back to "musical composition" being treated as referring

also to the "printed copy" which the proprietor has neglected to file.]

Copyright Act of July 8, 1870.

This was passed by the Forty-first Congress, and repealed prior enactments respecting copyrights, being entitled "An Act to Revise, Consolidate and Amend the Statutes Relative to Patents and Copyrights."

The copyright provisions are contained in Sections 85 to 111, both inclusive. (Sections 4948-4971 of Revised Statutes of 1873.)

Sec. 85 contains nothing pertinent to the present inquiry.

> "Sec. 86 (4952, R. S. 1873). *And be it further enacted*, That any citizen of the United States, or resident therein, who shall be the author, inventor, designer, or proprietor of any book, map, chart, dramatic or musical composition, engraving, cut, print, or photograph or negative thereof, or of a painting, drawing, chromo, statue, statuary, and of models or designs intended to be perfected as works of the fine arts, and his executors, administrators, or assigns, shall, upon complying with the provisions or this act, have the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing, and vending the same; and in the case of a dramatic composition, of publicly performing or representing it, or causing it to be performed or represented by others; and authors may reserve the right to dramatize or to translate their own works."

Sections 87, 88 and 89 contain nothing pertinent to the present inquiry.

> "Sec. 90 (4956, R. S. 1873). *And be it further enacted*, That no person shall be entitled to a copyright unless he shall, before publication, deposit in the mail a printed copy of the title of the book or

other article, or a description of the painting, drawing, chromo, statute, statuary, or model or design for a work of the fine arts, for which he desires a copyright, addressed to the Librarian of Congress, and, within ten days from the publication thereof, deposit in the mail two copies of such copyright book or other article, or in case of a painting, drawing, statue, statuary, model or design for a work of the fine arts, a photograph of the same, to be addressed to said Librarian of Congress, as hereinafter to be provided."

Sections 91 and 92 are not pertinent to the present inquiry.

"Sec. 93 (4959, R. S. 1873). *And be it further enacted*, That the proprietor of every copyright book or other article shall mail to the Librarian of Congress at Washington, within ten days after its publication, two complete printed copies thereof, of the best edition issued, or description or photograph of such article as hereinbefore required, and a copy of every subsequent edition wherein any substantial change shall be made."

Sec. 94 is not pertinent to the present inquiry.

"Sec. 95 (4961, R. S. 1873). *And be it further enacted*, That any such copyright book or other article may be sent to the Librarian of Congress by mail free of postage, provided the words 'Copyright matter' are plainly written or printed on the outside of the package containing the same."

Sec. 96 is not pertinent to the present inquiry.

"Sec. 97 (4962, R. S. 1873). *And be it further enacted*, That no person shall maintain an action for the infringement of his copyright unless he shall give notice thereof by inserting in the several copies of every edition published, on the title page or the page immediately following, if it be a book; or if a map, chart, musical composition, print, cut, engraving, photograph, painting, drawing, chromo,

statue, statuary, or model or design intended to be perfected and completed as a work of the fine arts, by inscribing upon some portion of the face or front thereof, or on the face of the substance on which the same shall be mounted, the following words, viz., 'Entered according to act of Congress, in the year , by A. B., in the office of the Librarian of Congress, at Washington.'

"Sec. 98 (4963, R. S. 1873). *And be it further enacted*, That if any person shall insert or impress such notice, or words of the same purport, in or upon any book, map, chart, musical composition, print, cut, engraving, or photograph, or other articles herein named, for which he has not obtained a copyright, every person so offending shall forfeit and pay one hundred dollars; one moiety thereof to the person who shall sue for the same, and the other to the use of the United States, to be recovered by action in any court of competent jurisdiction."

Sec. 99 provides penalties for infringing copyright on a book.

"Sec. 100 (4965, R. S. 1873). *And be it further enacted*, That if any person, after the recording of the title of any map, chart, musical composition, print, cut, engraving, or photograph, or chromo, or of the description of any painting, drawing, statue, statuary, or model or design intended to be perfected and executed as a work of the fine arts, as herein provided, shall, within the term limited, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, engrave, etch, work, copy, print, publish or import, either in whole or in part, or by varying the main design with intent to evade the law, or, knowing the same to be so printed, published, or imported, shall sell or expose to sale any copy of such map or other article, as aforesaid, he shall forfeit to the said proprietor all the plates on which the same shall be copied, and every sheet thereof, either copied or printed, and shall further

forfeit one dollar for every sheet of the same found in his possession, either printing, printed, copied, published, imported, or exposed for sale; and in case of a painting, statue, or statuary, he shall forfeit ten dollars for every copy of the same in his possession, or which have by him been sold or exposed for sale; one moiety thereof to the proprietor and the other to the use of the United States, to be recovered by action in any court of competent jurisdiction.

"Sec. 101 (4966, R. S. 1873). *And be it further enacted*, That any person publicly performing or representing any dramatic composition for which a copyright has been obtained, without the consent of the proprietor thereof, or his heirs or assigns, shall be liable for damages therefor, to be recovered by action in any court of competent jurisdiction; said damages in all cases to be assessed at such sum, not less than one hundred dollars for the first, and fifty dollars for every subsequent performance, as to the court shall appear to be just."

[NOTE:—This statue included among the subjects of copyright in addition to things included in former statutes, the following: *paintings, drawings, chromos, statues, statuary, and models or designs intended to be perfected as works of the fine arts.*

In Sec. 86 of this statute first appears provision coupling the right to dramatize or translate with the copyright under the provision:

"And authors may reserve the right to dramatize or translate their own works."

The following deductions from this enactment are obvious:

First. That the Forty-first Congress did not consider the words "print," "engraving" or "photograph" of the prior statutes broad enough to include

a painting, drawing or chromo, statue, statuary or model for work of the fine arts.

Second. That copyright under previous acts did not give the author or his assigns any monopoly of dramatization or translation, and that it was not even then considered expedient to couple such monopoly with the copyright, except as following and depending upon express reservation by the author.

Third. That, as in the preceding statutes, the "article" indicated by the words "musical composition" was considered to be something of which copies could be deposited in mail (Sec. 90), and of which "two complete printed copies" could be mailed to the Librarian (Sec. 93), and which could be printed in sheets from *plates;* and infringement of which could be effectively penalized by forfeiture of such plates and sheets, and by pecuniary penalty computed upon the number of sheets found in the possession of the infringer. (Sections 100 and 101.)

Fourth. That "publishing" does not include public performance, since otherwise the express inclusion of the right of publicly performing dramatic compositions would be tautological and superfluous.]

Revision of 1873.

The copyright statutes are contained in Sections 4948 to 4971, both inclusive, of this revision, and involve no substantial change in any respect pertinent to the present inquiry.

The Act of March 3, 1891.

This act amends some of the provisions of the then existing law, which were as follows:

Laws of 1870, Chapter 230, Sections 85 to 111 inclusive; re-enacted in laws of 1873 (Revised Statutes) Sections 4948 to 4971.

The only sections of the Revised Statutes of 1873 which are amended by the Act of 1891 were the following, viz., 4952, 4954, 4956, 4958, 4959, 4964, 4965 and 4967. The changes in Sections 4954, 4956 and 4963, are not material to the present inquiry.

Section 4952, in addition to striking out the provision confirming copyright to citizens or residents of the United States, was amended by striking out the words

> "and authors may reserve the right to dramatize or to translate their own works."

and inserting instead

> "and authors or their assigns shall have exclusive right to dramatize and translate any of their works for which copyright shall have been obtained under the laws of the United States."

The provisions of the Acts of 1870 and 1873 as to the *extent* of the right conferred on the owner of the copyright on a musical composition are not changed in the slightest degree by this Act of 1891.

Section 4958 refers to the Librarian's fees. It provides flat fees in each instance instead of so much per folio, and adds:

> "Provided that the charge for recording the title or description of *any article* entered for copyright . . . shall be one dollar . . . to defray the expense of lists of copyrighted articles as hereinafter provided for.

"And it is hereby made the duty of the Librarian of Congress to furnish to the Secretary of the Treasurer copies of the entries of titles of *all books and other articles* wherein the copyright has been completed by the deposit of two copies of such book printed from type set within the limits of the United States . . . and by the deposit of *two copies* of such other article made or produced in the United States, etc."

Section 4959 is amended by providing "in the case of a copyrighted *book or other article*" for the filing of a copy of every subsequent "*edition* wherein any substantial changes shall be made," and further adding a provision concerning alterations, revisions and additions to books by foreign authors.

Sections 4964 and 4965 are amended by inserting the word "dramatic" before the words "or musical composition."

Section 4965 is further amended by inserting the words "dramatize, translate," after the words "engrave, etch, work, copy, print, publish."

Section 4967 is amended by striking out the words

"if such author or proprietor is a citizen of the United States or resident therein."

And the following section is inserted:

"Sec. 13. That this act shall only apply to a citizen or subject of a foreign state or nation when such foreign state or nation permits to citizens of the United States of America the benefit of copyright on substantially the same basis as (to) its own citizens; and when such foreign state or nation is a party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States of America may, at its pleasure, become a party to such agreement. The existence of either of the con-

ditions aforesaid shall be determined by the President of the United States by proclamation made from time to time as the purpose of this act may require."

AMENDMENT OF JANUARY 6, 1897.

By this amendment, Sec. 4966 of the Act of 1870 and Revised Statutes of 1873 was amended to read as follows:

"Sec. 4966. Any person publicly performing or representing any dramatic *or musical* composition for which a copyright has been obtained, without the consent of the proprietor of said dramatic or musical composition, or his heirs or assigns, shall be liable for damages therefor," etc.

The remainder of the section provides for assessing damages and granting injunctions restraining public performance of dramatic or musical composition.

Proclamations Pursuant to Section 13 of the Act of March 3, 1891.

Proclamations Issued by the President, Extending Copyright to Citizens of Certain Foreign Countries: 1891-1899.

BELGIUM, FRANCE, GREAT BRITAIN AND HER POSSESSIONS, AND SWITZERLAND.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

1891. July 1.

Whereas it is provided by section 13 of the act of Congress of March 3, 1891, entitled "An act to amend title sixty, chapter three, of the Revised Statutes of the United States, relating to copyrights," that said act "shall only apply to a citizen or subject of a foreign state or nation when such foreign state or nation permits to citizens of the United States of America the benefit of copyright on substantially the same basis as its own citizens; or when such foreign state or nation is a party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States of America may, at its pleasure, become a party to such agreement."

And whereas it is also provided by said section that "the existence of either of the conditions aforesaid shall be determined by the President of the United States by proclamation made from time to time as the purposes of this act may require."

And whereas satisfactory official assurances have been given that in Belgium, France, Great Britain and the British possessions, and Switzerland, the law permits to citizens of the United States the benefit of copyright on substantially the same basis as to the citizens of those countries:

Now, therefore, I, Benjamin Harrison, President of the United States of America, do declare and proclaim that the first of the conditions specified in section 13 of

the act of March 3, 1891, is now fulfilled in respect to the citizens or subjects of Belgium, France, Great Britain, and Switzerland.

In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this first day of July, one thousand eight hundred and ninety-one,
[SEAL.] and of the independence of the United States the one hundred and fifteenth.

BENJ. HARRISON.

By the President:
WILLIAM F. WHARTON,
Acting Secretary of State.

GERMANY.

A PROCLAMATION.

1892, April 15.

Whereas it is provided by section 13 of the act of Congress of March 3, 1891, entitled "An act to amend title sixty, chapter three, of the Revised Statutes of the United States, relating to copyrights," that said act "shall only apply to a citizen or subject of a foreign state or nation when such foreign state or nation permits to citizens of the United States of America the benefit of copyright on substantially the same basis as its own citizens; or when such foreign state or nation is a party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States of America may, at its pleasure, become a party to such agreement;"

And whereas it is also provided by said section that "the existence of either of the conditions aforesaid shall be determined by the President of the United States by proclamation made from time to time as the purposes of this act may require;"

And whereas, in virtue of said section 13 of the aforesaid act of Congress, a copyright agreement was signed at Washington, on January 15, 1892, in the English and

German languages, by the representatives of the United States of America and the German Empire, a true copy of the English version of which agreement is word for word as follows:

The President of the United States of America and His Majesty the German Emperor, King of Prussia, in the name of the German Empire, being actuated by the desire to extend to their subjects and citizens the full benefit of the legal provisions in force in both countries in regard to copyright, have, to this end, decided to conclude an agreement, and have appointed as their plenipotentiaries:

The President of the United States of America, James G. Blaine, Secretary of State of the United States;

His Majesty the German Emperor, King of Prussia, Alfons Mumm von Schwarzenstein, his charge d'affairs near the Government of the United States of America, who, being duly authorized, have concluded the following agreement, subject to due ratification:

ARTICLE I.

Citizens of the United States of America shall enjoy, in the German Empire, the protection of copyright as regards works of literature and art, as well as photographs, against illegal reproduction, on the same basis on which such protection is granted to subjects of the Empire.

ARTICLE II.

The United States Government engages, in return, that the President of the United States shall, in pursuance of section 13 of the act of Congress of March 3, 1891, issue the proclamation therein provided for in regard to the extension of the provisions of that act to German subjects as soon as the Secretary of State shall have been officially notified that the present agreement has received the necessary legislative sanction in the German Empire.

ARTICLE III.

This agreement shall be ratified, and the ratifications shall be exchanged at Washington as soon as possible.

The agreement shall go into operation at the expiration of three weeks from the date of the exchange of its ratifications, and shall be applicable only to works not published at the time when it shall have gone into operation. It shall remain in force until the expiration of three months from the day on which notice of a desire for the cessation of its effects shall have been given by one of the contracting parties.

Done in duplicate, in the English and German languages, at the city of Washington, this 15th day of January, 1892.

JAMES G. BLAINE. (Seal.)
A. V. MUMM. (Seal.)

And whereas the official notification contemplated by Article II of the said agreement has been received by this Government;

Now, therefore, I, Benjamin Harrison, President of the United States of America, do declare and proclaim that the first of the conditions specified in section 13 of the act of March 3, 1891, is now fulfilled in respect to the subjects of the German Empire.

In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, the fifteenth day of April, one thousand eight hundred and [SEAL.] ninety-two, and of the Independence of the United States the one hundred and sixteenth.

BENJ. HARRISON.

By the President:
JAMES G. BLAINE,
Secretary of State.

ITALY.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

1892, October 31. Whereas it is provided by section 13 of the act of Congress of March 3, 1891, entitled "An act to amend title sixty, chapter three, of the Revised Statutes of the United States, relating to copyrights," that said act "shall only apply to a citizen or subject of a foreign state or nation when such foreign state or nation permits to citizens of the United States of America the benefit of copyright on substantially the same basis as its own citizens; or when such foreign state or nation is a party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States of America may, at its pleasure, become a party to such agreement."

And whereas it is also provided by said section that "the existence of either of the conditions aforesaid shall be determined by the President of the United States by proclamation made from time to time as the purpose of this act may require."

And whereas satisfactory official assurances have been given that in Italy the law permits to citizens of the United States the benefit of copyright on substantially the same basis as the subjects of Italy;

Now, therefore, I, Benjamin Harrison, President of the United States of America, do declare and proclaim that the first of the conditions specified in section 13 of the act of March 3, 1891, now exists and is fulfilled in respect to the subjects of Italy.

In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this thirty-first day of October, one thousand eight hundred and ninety-two, and of the Independence of the United States the one hundred and seventeenth.

[SEAL.]

BENJ. HARRISON.

By the President:
JOHN W. FOSTER,
Secretary of State.

Belgian Decisions.

DECREE OF THE FOURTH CHAMBER OF THE COURT OF APPEALS OF BRUSSELS OF THE 29TH OF DECEMBER, 1905.

(Translation from the French.)

In the cause of

Compagnie Generale des Phonographes Pathe Freres, and Societe Ullman,

Appellants,

vs.

Massenet and Puccini,

Appellees.

It is understood that the demand of the appellees, Massenet and Puccini, is based upon the manufacture of disks and cylinders for graphophones and phonographs reproducing the fragments of their musical works, and on the introduction of these disks and cylinders in Belgium, where they form the object of an important commerce.

It is understood that these appellees are the first of French and the second of Italian nationality; that the appellants are of French nationality.

It is understood that in matters of literary and artistic property the relations of Belgium with France and Italy are regulated by the International Convention of Berne of the 9th of September, 1886, approved by the law of September 30, 1887.

It is understood that if by the terms of Articles two and four of the said Convention, combined with Articles one and thirty-eight of the Belgian law of May 22, 1886, the foreign authors have the exclusive right to reproduce

their works or to authorize their reproduction in Belgium, in any manner or under any form whatsoever, this principle is subject to an exception announced in Article three of the preamble of conclusion, which makes an integral part of the Convention and is thus expressed:

> "It is understood that the manufacture and sale of instruments serving to reproduce mechanically the airs of music borrowed from the private domain are not considered as constituting musical infringement."

It is understood that the appellees contend that this provision is not imperative and can not confer broader rights than the interior legislations of the countries of the Union, where the particular conventions have been concluded between them, may accord the authors against the unauthorized reproduction of their works; that in consequence there is reason, in Belgium, to apply without any restriction the principle of equity contained in Article One of the law of May 22, 1886.

It is understood that as a fact the Convention of Berne had as its principal end the formulation of international rules constituting the *minimum* of protection that the high contracting parties engaged themselves to accord to the authors of literary and artistic works, but that Article Three of the preamble of conclusion, as well as that the final provision of Article Seven of the said Convention has an import quite different.

It is understood that the originals of that Article Three demonstrate that its originators have been inspired by economical prejudices; that the states of the Union have yielded at the instance of the Powers which desired to protect an industry employing numbers of their workmen, and of which the future appeared to be compromised by the guaranteeing the absolute right of authors, which has

enabled Mr. de Borchgrave to say in his report presented to the Chamber of Representatives on the 17th of June, 1887:—

> "Assuredly the charter of the new Union is not perfect; it reposes more on the mutual transactions and concessions than upon a principle ultimately defined and expressly recognized by the united countries."

It is understood that for a long time instruments serving to reproduce mechanically the airs of music have been the object of international agreement (by virtue of which they have been exempt from the application of the rules of the common right), whereby, by the terms of Article Four of the Convention concluded between Belgium and Switzerland April 25, 1867, for reciprocally guaranteeing artistic and literary property, the manufacture and sale of music boxes or analogous instruments cannot be subjected to any restriction or reserve, either under the Convention, or under the interanl laws of the contracting countries; that the Italian-Swiss Convention of May 3, 1869, is not less imperative.

The introduction, the manufacture, and the sale of music boxes, or analogous instruments reproducing the airs of music cannot be shackled between the two countries by any measure in execution of the present convention or of a law on the subject; that the text of these provisions, like that of the French-Swiss treaty of February 23, 1882, leaves not the least doubt subsisting that the contracting parties engaged themselves to place, within their respective territories, the industry of mechanical instruments of music under shelter from claim of authors.

It is understood that the Berne Convention has only confirmed anew that measure of industrial protection, putting at the same time the international legislation in

harmony with the French law of May 16, 1866, and Swiss law of April 23, 1883.

Considering that, if it seems certain that the editors had principally in view the industry of music boxes, chiming watches and hand organs, very important at that time in certain countries of the Union and especially in Switzerland, it is not less true that the terms of Article Three are generous and comprehend all the instruments which reproduce mechanically the airs of music; that even if that provision was exceptional in which gives a check to the general principle which proclaims the absolute right of the authors in their works, it is not permitted to the Judge to restrain the compass and to make a distinction between the ancient instruments which have inspired the international accord, and the new instruments which have entered into the terms of that accord.

Considering that the graphophone, composed of a reproducer armed with a point, a clockwork movement, a cylinder or disk and a horn, is a mechanical instrument; that if discussion may be raised on this point one must at least admit that it serves to reproduce mechanically airs of music; that then, in so much as it is employed for this special usage, it enters into the category of the instruments of which the manufacture and sale are declared to be legal.

It is understood that the appellees object that the placing on sale of copies of a disk or cylinder record constitutes a veritable edition falling under the application of Article One of the law of March 22, 1886, and of Article Two of the Convention.

Considering that these apparatus cannot be assimilated to the writing, or the notation by an engraving process, of

the thoughts of the author; that they have nothing in common with the conventional signs permitting reading or comprehension of the work to which they are related; that isolated from the rest of the instrument they remain, in the actual state of human knowledge, without any utility, that they are only one organ of an instrument of execution.

Seeing that at different occasions attempts have been made with the view to exclude from the application of Article Three of the preamble of the conclusion the instruments of interchangeable organs, by means of which an indefinite number of musical airs may be executed. Thus at the Paris conference, where the additional Act of May 4, 1896, was elaborated, the French Government proposed to add to the said Article Three a second paragraph in these words:

> "The benefit of this provision does not apply to those instruments which can reproduce the airs of music only by the addition of perforated bands, or cartons, or of other systems independent of the instrument, sold separately and constituting musical editions of a particular notation."

That this proposition was rejected following the opposition of several countries, and notably Germany; that in this latter country it was considered that the question of knowing how the mechanical instruments ought to be treated was not yet ripe for an international solution and they will draw attention to the difficulties which will go to make up the regulation, by legislative means, of the criteria without which these instruments will be considered as making an attack on the rights of the authors in their musical works.

That the question was submitted to the German Reichstag, in April, 1901, at the time of the revision of the law of June 11, 1870, on the right of the author and the right

of edition; that the Goverment was, on that occasion, invited to enter into negotiations with the other countries of the Union with a view to extend the protection of the right of the author

> "in the sense of the interdiction of all mechanical reproductions not authorized by the music, as well on instruments in which the cylinders or other parts reproducing the music are fixed, as upon interchangeable apparatus which may be sold separately and introduced by turns, such as disks, plates, cylinders, rolls, etc.; but that the Reichstag would not vote less than the disposition which is become the Article 22 of the law of the 19th of June, 1901; 'the transcription of a musical work on plates, disks, cylinders, bands and other similar parts of instruments serving to reproduce mechanically airs of music is lawful; this provision applies equally to the interchangeable parts unless they are adaptable to instruments by which the work may be reproduced from the point of view of the force and duration of sounds and from the point of view equivalent to a personal execution.' "

That in England it has been sustained that the sale of interchangeable perforated cartons, which are adaptable to an instrument called the Aeolian, make attack on the rights of the authors; but Supreme Court, confirming December 13, 1899, a decision of the High Court of Justice of London of the 19th of April previous, has rejected the demand of the authors in saying that the right conferred by the law to the composer of a musical work comprehends, in the first place, the prevention of a reproduction of the published work considered as a book and, in the second place, the public execution of the same, the private execution being absolutely free; that the perforated cartons are manufactured only to be used as part of a mechanical instrument of music; that if it is possible to certain experts to decipher the sense from the practical

point of view they cannot be regarded as having the character of sheets of music. (The Right of Authors, 1901, page 8.)

That the same question has been agitated in France and decided in the same sense by the Court of Paris January 9, 1895. (Dalloz Period 1895, 2. 413.) That, in short, the said court has decided, February 1, 1905, that the reproduction of airs of music on disks or cylinders of graphophones and gramophones do not constitute a musical infringement, because these are mechanical instruments, and that the law of May 16, 1866, has exonerated in a general fashion the airs of music reproduced by similar instruments. (The law No. of the 12-13 February.)

Considering that Germany, England and France make part of the Union of Berne; that if the Convention of the 9th of September, 1886, were to be interpreted conformably to the pretensions of the appellees, it will result that, in these three countries, foreign authors will enjoy more extensive rights than native authors. This is inadmissible.

Considering that the appellees further object that the graphophone or the gramophone reproduces at once the music and the words which are adapted to it, but that when it reproduces the words composed for the music and inseparable from it the airs with words are none the less airs of music entering in the terms of Article Three of the preamble which has not distinguished between instrumental and vocal music; that elsewhere, if it must be decided otherwise, the authors of the words will be the sole persons having the right to complain, while it is not alleged that the appellees, who are the composers of music, are themselves at the same time the authors of the words reproduced by the machines of the appellants.

Considering that one cannot fail to recognize that the industry of mechanical instruments of music, and in particular that of graphophones and their accessories, has taken an unexpected development which has attracted the attention of the Governments; that it seems inequitable that authors cannot, except in the case of public performance, secure any profit from the reproduction of their works, nor oppose such reproduction except in certain conditions, may be prejudicial to them; but we must decide that authors are without right so long as the Convention of Berne has not been modified or denounced.

For these reasons,

THE COURT

sets aside the judgment appealed from; declares the appellees without right in their action, non-suits them and condemns them to the costs of both instances.

(*Translation.*)

COURT OF CASSATION (FINAL COURT OF APPEAL) BRUSSELS, BELGIUM, FIRST CHAMBER.

May 2, 1907.

President Mr. GIRON. Attorney General Mr. TERLINDEN.

Counsel:—Mr. Edmond Picard, for Appellants; Messrs. Emile de Mot, Charles Woeste, Georges de Ro, for Appellees.

Massent and Puccini
contra
The Company General des Phonographes, etc. (Pathe Freres.)

THE COURT:—

After hearing the counsel La Meerre in his report and on the conclusions of Mr. Terlinden, first attorney general:

Upon the grounds:—of the false interpretation; of the

false application; and, springing from the violation of Articles 38 of the law of the 22d of March, 1886, on the rights of authors, combined with the Articles 1, 5, 6, 16, 17 and 18 of the same law, as much as may be necessary of Article 13; of the Article 2 of the Convention of Berne of the 9th of September, 1887; of the Article 3 and of Article 15 of the preamble of the closure annexed to that Convention; of the additional Article, al 2, of the same Convention in so much as may be necessary of Article 97 of the Constitution.

First:—In this,—that the judgment has decided; that Article 3 of the official report of closure has repealed, as to foreign authors, from the countries which have concluded the Berne Convention, the provision of Article 38 of the Law of March 22d, 1886, for the manufacture and sale of instruments (the phonograph, and the gramophone) serving to reproduce mechanically the airs of music borrowed from the domain privy of these authors, and by consequence has equally repealed to their prejudice the Articles 16 and 17 of the said Law;

Second:—In this,—that the judgment in order to give to this Article 3 a legal force derogatory to the Article 38 of the Belgian law, has decided that the said Article 3 constitutes a new provision of the law overpowering the repeals mentioned above. Then that in reality it is only a simple repeal, as to the said mechanical instruments existing at that epoch, of the legislation of certain states which have concluded the Convention of Berne.

Third:—In this;—that the judgment has decided that by the expression "instruments serving to reproduce mechanically the airs of music" the said Article 3 has signified not only the instruments in use at that epoch, that is to say the music boxes, watches with chimes, and Bar-

bary organs, but all the instruments created or to be created in the future and notably phonographs and gramophones.

Fourth:—In this;—that the judgment has interpreted the expression "instruments serving to reproduce mechanically the airs of music" comprising therein the interchangeable organs, cylinders, discs, cartons, perforated rolls, or others, then that these organs are not the instruments for reproduction of music, the proper apparatus to produce musical sounds; but veritable editions of musical works like the staff notation themselves.

Fifth:—In this;—that the judgment has extended Article 3 of the preamble to words, in lieu of restricting them to the music, and has not recognized the right of one of the collaborators of a dramatic-musical work to pursue the infringement independent of the other.

Considering that the action is founded on the fact that the defendants have introduced and placed on sale in Belgium the discs, and cylinders reproducing the works of the plaintiffs, the first a Frenchman, the second an Italian.

On the first three points:—Considering that at the time of the elaboration of the law of March 22, 1886, a convention concluded the 25th day of April, 1867, between Belgium and Switzerland for the reciprocal guarantee of the works of the brain and of art, convention made obligatory the 20th of August of the same year, provided as follows, in its Article 4:—

> "The present convention does not apply at all to the reproduction of musical airs by means of music boxes or analogous instruments; that the manufacture and sale of these instruments may not be submitted, between the two countries, to any restriction or reserve by the force of said convention or of a law on the subject."

Considering that from the work of elaboration of the law of the 22d of March, 1886, it does not appear that the intention to cause the repeal of that provision is clear, nor that the legislature had in mind the manufacture and sale of mechanical instruments.

That the International negotiations following that epoch, negotiations which have ended at the Convention of Berne on the 9th of September of same year, make clear that the legislature had not at all disposed of that subject.

That we may conclude from its silence that the manufacture and sale of the instruments of this nature have not at all been regarded by it as constituting by themselves attacks on the right protected by the new law;

Considering that elsewhere a legislative interpretation has determined the extent of the law on these points:—

That this interpretation results from the law of the 30th of September, 1887, approving the Convention of Berne above mentioned, to which, like Belgium, France and Italy were parties;

Considering that one of the provisions of this Convention, the Article 3 of the preamble of closure, stipulates that it:—

> "is understood that the manufacture and the sale of instruments serving to reproduce mechanically the airs of music borrowed from the private domain are not considered as constituting musical infringements."

Considering that the same tenor of this provision demonstrates that, by the help of the required sanctions, it was destined to effectuate the internal right of the states, the legislation of which limited not at all the right of authors.

That the judgment attacked affirms with reason that the contracting parties engage themselves by this to place in their respective territories the industry of mechanical musical instruments under shelter from the demands of authors.

Considering on the other part that the disposition reattaches itself narrowly to the Articles 2, 4 and 9 of the body of the convention, notably of Article 4 defining artistic and literary works.

That it limits the exclusive right of authors, that it withdraws from their control those notations whose object is to serve as an instrument for reproducing mechanically the airs of music.

That it is inadmissible that in the thought of the states signing the Convention, a provision having that interpretative range could be otherwise understood.

That contrarily to that which the appeal sustains, it ought then to extend itself to legislation assuring to the authors a protection more complete than the minimum instituted by the Union.

Considering that the Appellants contend that the said Article 3 was only a simple repeal of the treaties which, at the time of the Convention, were disposing of the subject of mechanical instruments then existing.

Considering that in this system and following the expression of the appellants the benefit of Article 4 previously mentioned of the treaty concluded in 1867 between Belgium and Switzerland would have to be maintained.

That there would have to be then room to admit that in adhering to Article 3 Belgium must implicitly reserve the faculty of interpreting it only as a measure of anterior disposition less absolute than the general terms on which was established the common accord;

That this in consequence destroys the objection:—

Considering that elsewhere the Convention of 1867 has been denounced.

That the appeal acknowledges nothing:

That a provision concluded in general terms has taken the place of the Article 4 of that Convention.

That therefore following the terms of the additional Article of the accord of Berne the Article 3 of the protocol "effects the maintenance of the 1st stipulation."

Considering that in no sense the terms of the said Article 3 authorizes a restrictive interpretation:

That, reprodncing the same terms of the French Law of 15th of May, 1866, and responding to the same economic thought, it cannot be extended otherwise than it (said French law).

That it springs from the preparatory work of that law, from the exposure of the motives, that in 1866 the improvements that mechanical instruments had received were not in any sense ignored; that from 1859 the French tribunals had been called to decide on the subject of mechanical pianos of which the slips (perforated rolls?) were sold separately, and that the manufacture and sale of these had been declared as constituting infringement.

That in the discussion of the law the existence of perforated cartons had been mentioned;

That "the incessant progress of mechanical arts" had been invoked by Merimee for the purpose of supporting the resistance that the commission of the Senate opposed to the project and to justify the claims of the authors.

That in spite of these precedents of that jurisprudence and these protestations, the project was nevertheless adopted in the general terms which became the terms of the law, and that further that the interpretation that has been given them accords with them.

Considering that the genesis of the Article 3 of the said protocol demonstrates among other things that the contracting states have not intended to restrict the range of that provision.

That, less clearly enunciated in the program of the Federal Counsel it has found its definitive expression in a formula, that cannot weaken the ulterior declarations, and which, excluding all restriction, may not by that alone be regarded as a simple repeal of the provision less absolute; that the meaning,—contrary to the allegation of the bill,—of the phrase "it is understood" employed in this provision is equivalent to the phrase "it is agreed," of which the states of the union have made use in the other Articles.

Considering besides that, after these express terms, the preamble ought to be held as an integral part of the convention, and that the same obligatory force attaches thus to each one of the provisions of this preamble;

Considering that, in this state, then that the court of Brussels without having had to decide on the subject of public performance of the works of the appellants, established supremely that phonographs or gramophones are instruments serving to reproduce mechanically the airs of music, the decree denounced is founded in good right on the general terms of the Article 3 aforesaid, and its (the decree's) power obligatory for declaring the Article 38 of the law of the 22d. of March, 1886, without application to the manufacture and the sale of phonographs and gramophones in Belgium.

That consequently the reasons of the first three branches is without foundation.

On the 4th Branch.

Considering that the Judge below established that the

interchangeable discs and cylinders are only the organs of an instrument of execution (performance).

That his decision on this point is supreme.

That it results that the manufacture and sale of these organs being covered by the Article 3 above cited the benefit of the provision established to the profit of the instrument necessarily applies to their organs.

Considering that, according to the appellants, these organs constitute equally with the staff notations veritable editions of musical works.

Considering that by the terms of the decree: "these machines have nothing in common with the conventional signs permitting one to read and understand the work which they reproduce, and that isolated from the rest of the instrument, they remaian as to actual human knowledge, without utility."

Considering that in deducing from these findings of fact that the discs and cylinders do not constitute the editions, the decree is supreme; from which follows the consequence that the reasons in the 5th point cannot be received.

On the 5th Branch.

Considering that by this that has been said the action of the appellants is directed to the reparation of the damage which they would have sustained following the sale in Belgium of discs and cylinders reproducing their works

Considering then that it is supremely decided that "these machines have nothing in common with the conventional signs permitting one to read and to understand the work which they reproduce, and that isolated from the instrument, they are without utility" they cannot be regarded as reproducing, whether a literary work or an

artistic work, in the sense of Article 1 of the law of March 22, 1886.

That it follows that the purview of the decree is sustained by these findings of fact, even supposing that the Court of Appeal had wrongly extended the Article 3 above mentioned to works instead of confining it to music.

That thus the reason of the 5th Branch is without foundation.

Considering that it results from this which has been said that the decree, founded upon the intention of the law, is not contrary to any of the dispositions invoked.

For these reasons the appeal is rejected, the appellants condemned to the costs and to pay an indemnity of Frs. 150 to the appellees.